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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION  
OR REVOCATION OF THE LICENSE OF

Administrative Action

JOHN A. KIRKOWSKI, D.M.D.  
License No. 22 DI00894000

CONSENT ORDER

TO PRACTICE DENTISTRY  
IN THE STATE OF NEW JERSEY

This matter was originally opened to the New Jersey State Board of Dentistry ("the Board") in 1991 upon receipt of information that the dental office of John A. Kirkowski, D.M.D. ("respondent"), was observed to be operating in an unsanitary manner. Respondent entered into a consent order agreeing to maintain his office in a clean and sanitary manner. He also paid a civil penalty. Similar violations were again reported in 1996. Respondent again entered into a consent order, agreed to maintain his office in a clean and sanitary manner, and paid a civil penalty and costs of investigation.

The most recent set of violations occurred on May 19, 2008. Two investigators of the Enforcement Bureau of the Division of Consumer Affairs ("Enforcement Bureau") conducted an inspection of respondent's dental office in response to receipt of a patient complaint alleging unsanitary conditions. The inspection revealed respondent's practice was again being operated in an unsanitary manner.

Respondent entered into a consent order with the Board dated July 30, 2008. Respondent agreed to cease and desist practice at and close his current practice until such time as he demonstrated to the Board's satisfaction, after an inspection by the Enforcement Bureau, that he is complying with the Center for Disease Control guidelines for sterilization and the disposal of medical waste, that respondent's x-ray unit has been inspected by the New Jersey Bureau of Radiologic Health, that respondent's office premises are sanitary and that the practice will be conducted in a safe and sanitary manner. Respondent was assessed civil penalties totaling five thousand one hundred dollars (\$5,100.00). Respondent's payment of investigative costs in the amount of three thousand, three hundred, forty-two dollars and fifty-six cents (\$3,342.56) were stayed and were to be activated upon a violation of the consent order. Respondent agreed to complete seven hours (7) of continuing education in sterilization techniques and complete a Occupational Safety and Health Administration course prior to applying for permission to reopen his practice. Respondent was reprimanded and agreed to random inspections upon the reopening of his dental practice.

On September 16, 2008, the Enforcement Bureau was contacted by Delta Dental ("Delta"). Delta advised that respondent submitted insurance claim forms for treatment rendered to patients after July 30, 2008, the date of the consent order. Records supplied by Delta indicated respondent treated six (6) patients after the July 30, 2008 consent order was entered. Respondent also told an Enforcement Bureau investigator that he treated a Medicaid patient and scheduled appointments after July 30, 2008.

On November 5, 2008, respondent appeared at an inquiry before the Board. Respondent admitted he saw and treated six patients in his practice subsequent to the entry of the consent order. Respondent acknowledged he willfully violated the terms of the consent order. Additionally, respondent acknowledged he had not completely satisfied all of the remedial continuing education requirements as per the consent order.

Having reviewed the entire record, including the information provided by Delta, as well as respondent's testimony during the investigative inquiry, it appears to the Board that respondent violated the July 30, 2008 consent order. These facts establish a basis for disciplinary action, pursuant to N.J.S.A. 45:1-21(e), in that respondent engaged in professional misconduct when he failed to comply with an order duly entered and served upon him in violation of N.J.A.C. 13:45C-1.4, by treating patients in violation of the July 30, 2008 consent order.

It appearing that respondent desires to resolve this matter without recourse to formal proceedings and for good cause shown:

IT IS ON THIS 9<sup>th</sup> DAY OF March, 2009,

HEREBY ORDERED AND AGREED THAT:

1. Respondent's license to practice dentistry in the State of New Jersey is hereby suspended for a period of one (1) year. The first six (6) months of the suspension are to be served as an active period of suspension. The remaining six (6) months are to be stayed and served as a period of probation.

2. Respondent is hereby assessed a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount in the amount of five thousand dollars (\$5,000) for engaging in professional misconduct. Payment of the civil penalty shall be made simultaneous with the signing of this consent order. Payment of the civil penalty shall be submitted by certified check or money order made payable to the State of New Jersey and shall be sent to Jonathan Eisenmenger, Executive Director, Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101.

3. Respondent is hereby assessed the previously stayed costs of the investigation to the State in this matter in the amount of three thousand, three hundred, forty-two dollars and fifty-six cents (\$3,342.56). Payment of the investigative costs shall be made simultaneous with the signing of this consent order. Payment of the investigative costs shall be by check or money order made payable to the State of New Jersey and shall be sent to Jonathan Eisenmenger, Executive Director, Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey

07101.

4. Prior to reinstatement, respondent shall submit proof to the Board that he will properly dispose of all regulated medical waste including having obtained a medical waste registration number with the Department of environmental Protection. Respondent must provide proof that he has contracted with a proper medical waste disposer and must maintain all records pertaining to the disposal of medical waste.

5. Prior to reinstatement, respondent shall submit proof to the Board that his sterilization unit has been subjected to appropriate sterilization monitoring. Respondent shall provide the Board with a copy of a contract with a sterilization monitoring service, and a copy of the test report from the monitoring service, indicating that test strips were submitted and the results of the test. Respondent shall thereafter maintain a log of when test strips are submitted and the test reports of the monitoring service and submit them to the Board on a quarterly basis.

6. Prior to reinstatement, respondent must submit to an inspection of his dental practice by the Enforcement Bureau of the Division of Consumer Affairs, to assure that respondent is complying with the Center for Disease Control guidelines for sterilization and that respondent's x-ray unit has been inspected by the New Jersey Bureau of Radiologic Health and that respondent's office premises are sanitary and that the practice will be conducted in a safe and sanitary manner.

7. Prior to reinstatement, respondent shall submit to a psychological evaluation to determine if respondent can practice dentistry with reasonable skill and safety. Respondent shall submit the curriculum vitae of a psychologist or psychiatrist that respondent desires to perform the evaluation. The psychologist or psychiatrist performing the evaluation shall be provided with information concerning respondent's history of disciplinary action with the Board including the previous consent orders. The psychologist or psychiatrist must be approved by the Board prior to the evaluation.

8. Prior to reinstatement, respondent shall provide the Board with a report from his

treating physician, Dr. Richard Vas, certifying that respondent's current medical status allows him to practice dentistry with reasonable skill and safety.

9. Prior to reinstatement, respondent shall submit proof of completion of his continuing educational requirements for the last two biennial renewal periods.

10. Prior to reinstatement, respondent shall:

a. Appear before the Board, or a committee of the Board, to discuss his readiness to re-enter the practice of dentistry. At that time, respondent shall be prepared to propose his plans for future practice in New Jersey.

b. Demonstrate to the satisfaction of the Board that he is physically and psychologically fit and that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare and that he is not then suffering from any impairment or limitation which could affect his practice.

c. Affirmatively establish his fitness, competence and capacity to re-enter the active practice of dentistry within New Jersey, including an accounting of all continuing education courses completed while his license was surrendered.

d. Provide the Board with a full account of his conduct during the intervening period.

11. The Board, in its sole discretion, will determine whether and under what conditions respondent may return to practice. Any reinstatement of respondent's license can be conditioned on such limitations, monitoring or restrictions as the Board finds necessary to protect the public health, safety and welfare.

12. Upon the reopening of his dental practice, respondent shall afford access to his dental practice for periodic, random inspections by the Enforcement Bureau for the purpose of assuring the Board that he is maintaining his office in a safe and sanitary condition and in conformance with the requirements of this order and with the sanitary requirements of the July 30, 2008 consent order. Respondent shall be responsible for paying the costs of these inspections.

13. Respondent shall cease and desist from the violations described herein.

Subsequent violations subject respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.


14. Failure to remit any payment required by this order will result in the filling of a certificate of debt with interest accruing at the rate provided by the Rules of Court.

15. Any practice in this State prior to formal reinstatement of license by the Board shall constitute grounds for a charge of unlicensed practice.

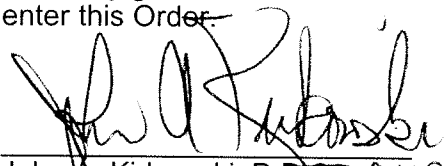

16. Failure to comply with any of the terms of this consent order may result in further disciplinary action. Respondent hereby consents to the entry of an order of automatic suspension of license without notice upon the Board's receipt of information which the Board in its sole discretion deems reliable demonstrating that respondent has failed to comply with any on the conditions set forth in this consent order.

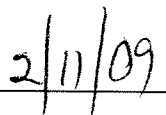
17. Respondent shall have the right to apply for removal of the automatic suspension on five (5) days notice but in such event shall be limited to a showing that the information submitted regarding a violation of this consent order was false.

NEW JERSEY STATE BOARD OF DENTISTRY

By:   
Alexander Hall, D.M.D.  
Board President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

  
John A. Kirkowski, D.D.S. 

  
Date